

114TH CONGRESS  
1ST SESSION

# S. 2308

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension plans, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2015

Mr. CARDIN (for himself, Mr. PORTMAN, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension plans, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Church Plan Clarifica-  
5       tion Act of 2015”.

6 **SEC. 2. CHURCH PLAN CLARIFICATION.**

7       (a) APPLICATION OF CONTROLLED GROUP RULES TO  
8       CHURCH PLANS.—

9                   (1) IN GENERAL.—Section 414(c) of the Inter-  
10          nal Revenue Code of 1986 is amended—

1                             (A) by striking “For purposes” and insert-  
2                             ing the following:

3                             “(1) IN GENERAL.—Except as provided in para-  
4                             graph (2), for purposes”, and

5                             (B) by adding at the end the following new  
6                             paragraph:

7                             “(2) SPECIAL RULES RELATING TO CHURCH  
8                             PLANS.—

9                             “(A) GENERAL RULE.—Except as provided  
10                             in subparagraphs (B) and (C), for purposes of  
11                             this subsection and subsection (m), an organi-  
12                             zation that is otherwise eligible to participate in  
13                             a church plan shall not be aggregated with an-  
14                             other such organization and treated as a single  
15                             employer with such other organization for a  
16                             plan year beginning in a taxable year unless—

17                             “(i) one such organization provides  
18                             (directly or indirectly) at least 80 percent  
19                             of the operating funds for the other orga-  
20                             nization during the preceding tax year of  
21                             the recipient organization, and

22                             “(ii) there is a degree of common  
23                             management or supervision between the or-  
24                             ganizations such that the organization pro-  
25                             viding the operating funds is directly in-

1    volved in the day-to-day operations of the  
2    other organization.

3    “(B)     NONQUALIFIED     CHURCH-CON-  
4    TROLLED     ORGANIZATIONS.—Notwithstanding  
5    subparagraph (A), for purposes of this sub-  
6    section and subsection (m), an organization  
7    that is a nonqualified church-controlled organi-  
8    zation shall be aggregated with 1 or more other  
9    nonqualified church-controlled organizations, or  
10    with an organization that is not exempt from  
11    tax under section 501, and treated as a single  
12    employer with such other organization, if at  
13    least 80 percent of the directors or trustees of  
14    such other organization are either representa-  
15    tives of, or directly or indirectly controlled by,  
16    such nonqualified church-controlled organiza-  
17    tion. For purposes of this subparagraph, the  
18    term ‘nonqualified church-controlled organiza-  
19    tion’ means a church-controlled tax-exempt or-  
20    ganization described in section 501(c)(3) that is  
21    not a qualified church-controlled organization  
22    (as defined in section 3121(w)(3)(B)).

23    “(C)     PERMISSIVE     AGGREGATION     AMONG  
24    CHURCH-RELATED     ORGANIZATIONS.—The  
25    church or convention or association of churches

1           with which an organization described in sub-  
2           paragraph (A) is associated (within the mean-  
3           ing of subsection (e)(3)(D)), or an organization  
4           designated by such church or convention or as-  
5           sociation of churches, may elect to treat such  
6           organizations as a single employer for a plan  
7           year. Such election, once made, shall apply to  
8           all succeeding plan years unless revoked with  
9           notice provided to the Secretary in such manner  
10           as the Secretary shall prescribe.

11           “(D) PERMISSIVE DISAGGREGATION OF  
12           CHURCH-RELATED ORGANIZATIONS.—For pur-  
13           poses of subparagraph (A), in the case of a  
14           church plan, an employer may elect to treat  
15           churches (as defined in section 403(b)(12)(B))  
16           separately from entities that are not churches  
17           (as so defined), without regard to whether such  
18           entities maintain separate church plans. Such  
19           election, once made, shall apply to all suc-  
20           ceeding plan years unless revoked with notice  
21           provided to the Secretary in such manner as the  
22           Secretary shall prescribe.”.

23           (2) CLARIFICATION RELATING TO APPLICATION  
24           OF ANTI-ABUSE RULE.—The rule of 26 CFR  
25           1.414(c)–5(f) shall continue to apply to each para-

1 graph of section 414(c) of the Internal Revenue  
2 Code of 1986, as amended by paragraph (1).

3 (3) EFFECTIVE DATE.—The amendments made  
4 by paragraph (1) shall apply to years beginning be-  
5 fore, on, or after the date of the enactment of this  
6 Act.

7 (b) APPLICATION OF CONTRIBUTION AND FUNDING  
8 LIMITATIONS TO 403(b) GRANDFATHERED DEFINED  
9 BENEFIT PLANS.—

10 (1) IN GENERAL.—Section 251(e)(5) of the Tax  
11 Equity and Fiscal Responsibility Act of 1982 (Public  
12 Law 97–248), is amended—

13 (A) by striking “403(b)(2)” and inserting  
14 “403(b)”, and

15 (B) by inserting before the period at the  
16 end the following: “, and shall be subject to the  
17 applicable limitations of section 415(b) of such  
18 Code as if it were a defined benefit plan under  
19 section 401(a) of such Code (and not to the  
20 limitations of section 415(c) of such Code).”.

21 (2) EFFECTIVE DATE.—The amendments made  
22 by this subsection shall apply to years beginning be-  
23 fore, on, or after the date of the enactment of this  
24 Act.

25 (c) AUTOMATIC ENROLLMENT BY CHURCH PLANS.—

1                             (1) IN GENERAL.—This subsection shall super-  
2                             sede any law of a State that relates to wage, salary,  
3                             or payroll payment, collection, deduction, garnish-  
4                             ment, assignment, or withholding which would di-  
5                             rectly or indirectly prohibit or restrict the inclusion  
6                             in any church plan (as defined in section 414(e) of  
7                             the Internal Revenue Code of 1986) of an automatic  
8                             contribution arrangement.

9                             (2) DEFINITION OF AUTOMATIC CONTRIBUTION  
10                             ARRANGEMENT.—For purposes of this subsection,  
11                             the term “automatic contribution arrangement”  
12                             means an arrangement—

13                             (A) under which a participant may elect to  
14                             have the plan sponsor or the employer make  
15                             payments as contributions under the plan on  
16                             behalf of the participant, or to the participant  
17                             directly in cash,

18                             (B) under which a participant is treated as  
19                             having elected to have the plan sponsor or the  
20                             employer make such contributions in an amount  
21                             equal to a uniform percentage of compensation  
22                             provided under the plan until the participant  
23                             specifically elects not to have such contributions  
24                             made (or specifically elects to have such con-  
25                             tributions made at a different percentage), and

1                             (C) under which the notice and election re-  
2                             quirements of paragraph (3), and the invest-  
3                             ment requirements of paragraph (4), are satis-  
4                             fied.

5                             (3) NOTICE REQUIREMENTS.—

6                             (A) IN GENERAL.—The plan sponsor of, or  
7                             plan administrator or employer maintaining, an  
8                             automatic contribution arrangement shall, with-  
9                             in a reasonable period before the first day of  
10                             each plan year, provide to each participant to  
11                             whom the arrangement applies for such plan  
12                             year notice of the participant's rights and obli-  
13                             gations under the arrangement which—

14                                 (i) is sufficiently accurate and com-  
15                             prehensive to apprise the participant of  
16                             such rights and obligations, and

17                                 (ii) is written in a manner calculated  
18                             to be understood by the average partici-  
19                             pant to whom the arrangement applies.

20                             (B) ELECTION REQUIREMENTS.—A notice  
21                             shall not be treated as meeting the require-  
22                             ments of subparagraph (A) with respect to a  
23                             participant unless—

24                                 (i) the notice includes an explanation  
25                             of the participant's right under the ar-

1 arrangement not to have elective contributions  
 2 made on the participant's behalf (or  
 3 to elect to have such contributions made at  
 4 a different percentage),

5 (ii) the participant has a reasonable  
 6 period of time, after receipt of the expla-  
 7 nation described in clause (i) and before  
 8 the first elective contribution is made, to  
 9 make such election, and

10 (iii) the notice explains how contribu-  
 11 tions made under the arrangement will be  
 12 invested in the absence of any investment  
 13 election by the participant.

14 (4) DEFAULT INVESTMENT.—If no affirmative  
 15 investment election has been made with respect to  
 16 any automatic contribution arrangement, contribu-  
 17 tions to such arrangement shall be invested in a de-  
 18 fault investment selected with the care, skill, pru-  
 19 dence, and diligence that a prudent person selecting  
 20 an investment option would use.

21 (5) EFFECTIVE DATE.—This subsection shall  
 22 take effect on the date of the enactment of this Act.

23 (d) ALLOW CERTAIN PLAN TRANSFERS AND MERG-  
 24 ERS.—

1                     (1) IN GENERAL.—Section 414 of the Internal  
2                     Revenue Code of 1986 is amended by adding at the  
3                     end the following new subsection:

4                     “(z) CERTAIN PLAN TRANSFERS AND MERGERS.—

5                         “(1) IN GENERAL.—Under rules prescribed by  
6                     the Secretary, except as provided in paragraph (2),  
7                     no amount shall be includible in gross income by  
8                     reason of—

9                         “(A) a transfer of all or a portion of the  
10                     accrued benefit of a participant or beneficiary,  
11                     whether or not vested, from a church plan that  
12                     is a plan described in section 401(a) or an an-  
13                     nuity contract described in section 403(b) to an  
14                     annuity contract described in section 403(b), if  
15                     such plan and annuity contract are both main-  
16                     tained by the same church or convention or as-  
17                     sociation of churches,

18                         “(B) a transfer of all or a portion of the  
19                     accrued benefit of a participant or beneficiary  
20                     from an annuity contract described in section  
21                     403(b) to a church plan that is a plan described  
22                     in section 401(a) or an annuity contract de-  
23                     scribed in section 403(b), if such plan and an-  
24                     nuity contract are both maintained by the same

1           church or convention or association of churches,

2           or

3           “(C) a merger of a church plan that is a  
4           plan described in section 401(a), or an annuity  
5           contract described in section 403(b) with an an-  
6           nuity contract described in section 403(b), if  
7           such plan and annuity contract are both main-  
8           tained by the same church or convention or as-  
9           sociation of churches.

10          “(2) LIMITATION.—Paragraph (1) shall not  
11          apply to a transfer or merger unless the partici-  
12          pant’s or beneficiary’s total accrued benefit imme-  
13          diately after the transfer or merger is equal to or  
14          greater than the participant’s or beneficiary’s total  
15          accrued benefit immediately before the transfer or  
16          merger, and such total accrued benefit is nonforfeit-  
17          able after the transfer or merger.

18          “(3) QUALIFICATION.—A plan or annuity con-  
19          tract shall not fail to be considered to be described  
20          in sections 401(a) or 403(b) merely because such  
21          plan or annuity contract engages in a transfer or  
22          merger described in this subsection.

23          “(4) DEFINITIONS.—For purposes of this sub-  
24          section:

1                 “(A) CHURCH OR CONVENTION OR ASSO-  
2                 CIATION OF CHURCHES.—The term ‘church or  
3                 convention or association of churches’ includes  
4                 an organization described in subparagraph (A)  
5                 or (B)(ii) of subsection (e)(3).

6                 “(B) ANNUITY CONTRACT.—The term ‘an-  
7                 nuity contract’ includes a custodial account de-  
8                 scribed in section 403(b)(7) and a retirement  
9                 income account described in section 403(b)(9).

10                 “(C) ACCRUED BENEFIT.—The term ‘ac-  
11                 crued benefit’ means—

12                 “(i) in the case of a defined benefit  
13                 plan, the employee’s accrued benefit deter-  
14                 mined under the plan, and

15                 “(ii) in the case of a plan other than  
16                 a defined benefit plan, the balance of the  
17                 employee’s account under the plan.”.

18                 (2) EFFECTIVE DATE.—The amendment made  
19                 by this subsection shall apply to transfers or merg-  
20                 ers occurring after the date of the enactment of this  
21                 Act.

22                 (e) INVESTMENTS BY CHURCH PLANS IN COLLEC-  
23                 TIVE TRUSTS.—

24                 (1) IN GENERAL.—In the case of—

1                             (A) a church plan (as defined in section  
2                             414(e) of the Internal Revenue Code of 1986),  
3                             including a plan described in section 401(a) of  
4                             such Code and a retirement income account de-  
5                             scribed in section 403(b)(9) of such Code, and  
6                             (B) an organization described in section  
7                             414(e)(3)(A) of such Code the principal pur-  
8                             pose or function of which is the administration  
9                             of such a plan or account,  
10                             the assets of such plan, account, or organization (in-  
11                             cluding any assets otherwise permitted to be com-  
12                             mingled for investment purposes with the assets of  
13                             such a plan, account, or organization) may be in-  
14                             vested in a group trust otherwise described in Inter-  
15                             nal Revenue Service Revenue Ruling 81-100 (as  
16                             modified by Internal Revenue Service Revenue Rul-  
17                             ings 2004-67, 2011-1, and 2014-24), or any subse-  
18                             quent revenue ruling that supersedes or modifies  
19                             such revenue ruling, without adversely affecting the  
20                             tax status of the group trust, such plan, account, or  
21                             organization, or any other plan or trust that invests  
22                             in the group trust.

1                   (2) EFFECTIVE DATE.—This subsection shall  
2       apply to investments made after the date of the en-  
3       actment of this Act.

○